

**MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD
AUGUST 21, 2009, MEETING**

**Boardroom 106
Wisconsin Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 10:05 a.m. Other LFSRB members present were Andy Johnson, Bob Selk, Fran Byerly, Lee Engelbrecht, Bob Topel, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

Call to order: open meeting notice; approval of agenda; approval of June 19, 2009, open and closed session meeting minutes

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Topel moved to approve agenda, and Engelbrecht seconded the motion. The motion passed.

Holte presented the June 19, 2009, open session meeting minutes for approval. Johnson made a motion to approve the minutes as written, and Topel seconded the motion. The motion passed. Holte then presented the June 19, 2009, closed session meeting minutes for approval. Topel made a motion to approve the minutes as written, and Johnson seconded the motion. The motion passed.

Status of appeal on Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01, circuit court decision

Daniels reported that the appeals court is waiting to receive a brief from the Town of Magnolia. The Town's attorney has requested an extension on submitting the brief. Once the time limit has been reached to receive briefs, there will be a 15-day time limit to submit reply briefs. Most likely, it will be a few months before the court of appeals renders a decision in the case. Three out of five justices on the appeals court will hear the case.

Van Dyke v. Racine County, Docket No. 09-L-01: case review process, identification of issues on appeal, discussion, LFSRB decision, and set date for LFSRB signoff of final written decision on case

Daniels reviewed the history of this case. The LFSRB heard this case in the fall of 2008 where it overturned the decision of the local government to grant a siting permit to Noble Farms. Noble Farms resubmitted the siting application to the county with corrections, and a public hearing was held. The county once again granted the permit, and a neighbor within the 2-mile radius of the farm filed an appeal with the LFSRB to review the local decision. The LFSRB requested the record from the county and position statements from affected individuals. Both the record and statements were received in a timely matter, and now the case is before the LFSRB for review.

Daniels reported that she sent out information on how the LFSRB will handle the case to all interested parties in order to clarify the role of the Board.

Before the issues were identified, Selk and Gaska suggested the LFSRB focus only on the Van Dyke appeal and the county's response as other position statements didn't address areas the Board has jurisdiction over and in some cases, were matters of opinion. The Board then discussed the issues on appeal and agreed that two standards were being challenged: the nutrient management standard (Worksheet 3), and certification and capacity of an existing lagoon on the property (Worksheet 4).

The Board began their discussion by addressing the challenge to the certification and capacity of the existing lagoon. On the lagoon's certification, the Board concluded the certification was not out of date and there was nothing in the record that indicated changes to the lagoon that would have prompted a change in certification. On the capacity of the lagoon, the Board concluded that the first year manure carryover will not be for the maximum number of animal units approved for in the permit; the year utilization is from harvest to harvest when looking at the nutrient management plan's overall capacity to handle nutrients; the storage capacity is adequate and accounts for winter storage; and the crop rotation and land base for spreading is adequate.

The Board also discussed Van Dyke's concern over the credibility of the application due to the acreage inconsistency throughout the document. The Board concluded that differences in acreage numbers may occur due to the fact that different plans, i.e. the conservation plan and the nutrient management plan, are produced by different professional agencies; that professionals who are trained in this area, and not LFSRB members, best determine the acreage needed; that the supervision and execution of the nutrient management plan is handled at the local level; and that the acreage inconsistencies do not challenge the credibility of the application. LFSRB members also discussed whether the crop yields would adequately absorb the amount of manure mentioned in the plan and came to the conclusion that they would.

Before making a final decision in the case, Board members discussed if their final decision should address all the issues in the appeal. They decided they would address only those issues they had jurisdiction over, which was done in the previous discussion. Johnson made a motion that the aggrieved person did not show by clear and convincing evidence in the record or looking at the nutrient management plan itself to overcome the presumption of the adequacy of the application; and that the LFSRB finds the application is internally consistent, credible, and complete; and therefore, the county's granting of the permit has been sustained. Gaska seconded the motion. By unanimous vote, the motion passed. Daniels reviewed the Board's findings of fact in the case, which came from the earlier discussion on issues on appeal.

The Board will review the final decision at their September 18th meeting. The meeting will be held by teleconference call.

Board schedule and future agenda items

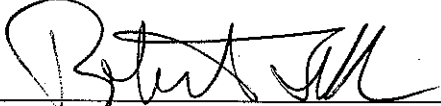
LFSRB members reviewed the remaining scheduled 2009 meeting dates. Engelbrecht had a conflict with the December 18th meeting date where he will not be able to attend. Daniels stated

that the future dates do not conflict with any state mandated furlough days for state employees. She also stated that she will look into whether the state senate has confirmed Selk's and Gaska's reappointment to the LFSRB.

Adjourn

Being no other business before the LFSRB, Engelbrecht moved to adjourn the meeting. Selk seconded the motion. The motion passed, and the meeting ended at 11:35 p.m.

Respectfully submitted,



Bob Selk, Secretary 10.05.09
Date

Recorder: LP